

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 512

INTRODUCER: Senator Flores

SUBJECT: Cemeteries

DATE: March 7, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>BI</u>	_____

I. Summary:

SB 512 provides an exemption from licensing and regulation by the Board of Funeral, Cemetery, and Consumer within the Department of Financial Services for religious-institution-owned cemeteries, including all associated columbaria and mausoleums. An exempted cemetery must consist of 50 acres or less. The religious institution must limit burial rights within the cemetery to members of the religious institution and their families, and is required to maintain escrow funds sufficient to cover maintenance costs and preneed agreement.

The bill also amends s. 497.452, F.S. to expand the existing exemption from preneed sales licensing and regulation, for the religious-institution-owned cemeteries. It deletes the current limitation that the exempted cemetery must have been located in a county with a population of at least 960,000 persons on July 1, 1996. It also deletes the requirement that the exempted cemetery must have engaged in the sale of preneed contracts prior to October 1, 1993.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

The Board of Funeral, Cemetery, and Consumer within the Department of Financial Services is the agency charged with regulating cemeteries, funeral directing, embalming, preneed sales, monument establishments, cremation, crematories, and direct disposition under ch. 497, F.S.¹ The Division of Funeral, Cemetery, and Consumer Services (division) within the department is the administers the provisions of ch. 497, F.S., on behalf of the board.

Part II of ch. 497, F.S., provides for the regulation of cemeteries. Section 497.263(1), F.S., prohibits the operation of a cemetery without first obtaining a license, unless specifically exempted from ch. 497, F.S.

¹ Section 497.101, F.S.

Unlicensed Cemeteries

Section 497.260(1), F.S., exempts the following cemeteries from ch. 497, F.S., and the rules adopted pursuant to the chapter:

- (a) Religious institution cemeteries of less than 5 acres which provide only single-level ground burial.
- (b) County and municipal cemeteries.
- (c) Community and nonprofit association cemeteries which provide only single-level ground burial and do not sell burial spaces or burial merchandise.
- (d) Cemeteries owned and operated or dedicated by a religious institution prior to June 23, 1976.
- (e) Cemeteries beneficially owned and operated since July 1, 1915, by a fraternal organization or its corporate agent.
- (f) A columbarium consisting of less than one-half acre which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a columbarium shall ensure that the columbarium is perpetually kept and maintained in a manner consistent with the intent of this chapter. If the religious institution relocates, the religious institution shall relocate all of the urns and remains placed in the columbarium which were placed therein during its use by the religious institution.
- (g) Family cemeteries of less than 2 acres which do not sell burial spaces or burial merchandise.
- (h) A mausoleum consisting of 2 acres or less which is owned by and immediately contiguous to an existing religious institution facility and is subject to local government zoning. The religious institution establishing such a mausoleum must ensure that the mausoleum is kept and maintained in a manner consistent with the intent of this chapter and limit its availability to members of the religious institution. The religious institution establishing such a mausoleum must have been incorporated for at least 25 years and must have sufficient funds in an endowment fund to cover the costs of construction of the mausoleum.
- (i) A columbarium consisting of 5 acres or less which is located on the main campus of a state university as defined in s. 1000.21(6). The university or university direct-support organization, as defined in s. 1004.28(1), which establishes the columbarium shall ensure that the columbarium is constructed and perpetually kept and maintained in a manner consistent with subsection (2) and the intent of this chapter.

However, s. 497.260(2), F.S., provides that all cemeteries in this state must comply with the following requirements:

- The burial records requirements in s. 497.276(1), F.S.;
- The prohibition against refusing to sell or issue a contract or provide services to any person because of the person's race, color, creed, marital status, sex, or national origin in s. 497.152(1)(d), F.S.;

- The regulation of the solicitation of sales of burial rights, merchandise, or services by licensees in s. 497.164, F.S.;
- The provision in s. 497.2765, F.S., that permits person to record with the clerk of the court a permanent record of the purchase of purchase of the burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden with the clerk of the court in the county where the burial right, belowground crypt, grave space, mausoleum, columbarium, ossuary, or scattering garden is located;
- The provisions related to the fees and the installation, including markers, for monuments in s. 497.278, F.S.;
- The provision of 497.280, F.S., which prohibits the tying of the purchase of any grave space to the purchase of a monument from or through the seller of any other designated person or corporation; and
- The provisions related to the maintenance of abandoned cemeteries by county or municipalities in s. 497.284, F.S.

Section 497.452(4), F.S., provides that any religious-institution-owned cemetery that is exempt under s. 497.260(1)(d), F.S., is located in a county with a population of at least 1.3 million persons on July 1, 1996,² and was selling merchandise and services to the religious institution's members prior to October 1, 1993, may establish one additional exempt cemetery in such county after December 31, 2020.

Section 497.005(63), F.S. defines "religious institution" as:

an organization formed primarily for religious purposes that has qualified for exemption from federal income tax as an exempt organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Preneed Contracts

Part IV of ch. 497, F.S., provides for the regulation of preneed sales. Section 497.452(1), F.S., requires a license issued by the board before a person may sell, advertise to sell, or make an arrangement for a preneed contract.

Section 497.005(56), F.S., defines a "preneed contract" as "any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future."

Section 497.452(4), F.S., exempts religious-institution-owned cemeteries, that are exempt under s. 497.260(1)(d), F.S., from preneed sales regulation if the cemetery is in a county with a population of at least 960,000 persons on July 1, 1996,³ and if such cemetery has engaged in the sale of preneed contracts prior to October 1, 1993, and it maintains a positive net worth at the end of each fiscal year of the cemetery.

² Miami-Dade County had 1,449,300 persons on July 1, 1996. The next largest county was Broward County with 884,872 on that date. See *Countywide, Unincorporated, and Incorporated Total: 1972-2013*, Office of Economic & Demographic Research, the Florida Legislature at <http://edr.state.fl.us/Content/population-demographics/data/> (Last visited March 11, 2014).

³ *Id.*

III. Effect of Proposed Changes:

The bill creates s. 497.260(1)(j), F.S., to provide an additional exemption from licensing and regulation for religious-institution-owned cemeteries, including all associated columbaria and mausoleums. An exempted cemetery must consist of 50 acres or less.

In addition, the religious institution must limit burial rights within the cemetery to members of the religious institution and their families. The bill does not define the persons who would qualify as a family member of a member of the religious institution.

The religious institution would also be required to maintain escrow funds sufficient to cover maintenance costs and preneed agreement.

The bill also amends s. 497.452, F.S. to expand an existing exemption from preneed sales licensing and regulation, for the religious-institution-owned cemeteries. It deletes the limitation the exempted cemetery must be located in a county with a population of at least 960,000 persons on July 1, 1996. It also deletes the requirement that the exempted cemetery has engaged in the sale of preneed contracts prior to October 1, 1993.

The board would not have the authority to enforce a religious institution's compliance with the provisions of s. 497.260(1)(j), F.S. The requirements of this exemption require self-enforcement by the religious institution. According to the division, the board does not have adequate resources or jurisdiction to perform the audits required to determine compliance. Performing audits would require the division to inspect the accounts, records, and business of the religious institution to the same extent as licensed cemeteries and preneed sellers. However, the bill exempts religious institution-owned cemeteries from such regulation.⁴

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ 2014 Agency Bill Analysis for SB 512, Division of Funeral, Cemetery, and Consumer Services, Department of Financial Services, January 14, 2014.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the division, the ongoing expansion of U.S. Department of Veteran Affairs (VA) cemeteries is impacting licensed cemeteries because they draw business from licensed cemeteries, and further stresses sales and cash flows at licensed cemeteries. For example, the Florida National Cemetery in Bushnell opened in 1988 and is now the second busiest VA national cemetery in the country with 6,728 interments completed in fiscal year 2011. Of the VA's 131 cemeteries across the nation, Florida is home to six national cemeteries that rank among the top 32 busiest by interment workload. Three new national VA cemeteries have opened in Florida over the past five years: including Jacksonville National Cemetery (2009), Sarasota National Cemetery (2009) and South Florida National Cemetery (2007).

In November 2012, the VA announced that it had purchased land for two additional VA cemeteries in Florida: 250 acres in the Tallahassee area and 318 acres in the Daytona area. These new cemeteries will likely open in 2015.

The division also noted that there has been a decreasing demand for traditional burial spaces due to the increasing demand for cremation services.⁵

VIII. Statutes Affected:

This bill substantially amends sections 497.260 and 497.452 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁵ Id.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
